

Section 2(47)(v) of Income Tax Act Explained: When Does Capital Gain Arise in Property Transactions?

Determining the correct Financial Year (FY) for computing **Capital Gain or Capital Loss** on the transfer of immovable property can be complex, especially when payments are made in parts over a long period. Understanding the exact point of "transfer" is crucial not only for tax assessment but also for the **purpose of indexation** for the buyer.

This article explores the nuances of "staggered payments" and how to identify the definitive transfer point.

(A) Case Study: Agreement vs. Possession

Consider a scenario where an **Agreement for Sale** of a property was made on **30.03.2013** and advances were exchanged. However, the formal conveyance was executed and **possession was transferred on 30.06.2014**.

The key question is: Should the Capital Gain be assessable in **AY 2014-15** or **AY 2015-16**?

(B) Section 2(47)(v) and the Definition of "Transfer"

Capital Gain is triggered by the "transfer" of a capital asset. **Section 2(47)(v) of the Income Tax Act**, read with **Section 53A of The Transfer of Property Act, 1882**, makes it clear that a transaction is treated as a transfer *only* when possession has been taken or retained by the buyer.

In this specific case:

- **Possession Date:** FY 2014-15 (corresponding to AY 2015-16).
- **Tax Impact:** Capital gain or loss must be calculated in **AY 2015-16**.

This principle was upheld in the case of [M/s ARCHEAN REALTY P. LTD. Vs THE DY. COMMISSIONER OF INCOME TAX \(2023-VIL-809-ITAT-CHE\)](#).

(C) Determining the Base Year for Indexation

If the buyer subsequently transfers the property, which Assessment Year should be considered the **base year for indexation**?

Following the same legal principles, since the transfer is only recognized upon possession, the base year for the purpose of indexation shall be **AY 2015-16** itself.

(D) Impact of Full Payment and TDS u/s 194IA

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A common question arises: If the entire consideration was paid by the buyer on **30.03.2013** and **TDS u/s 194IA** was deducted, does the transfer date shift to FY 2013-14?

The answer remains **No**. Even if full payment is made and TDS is deducted, the transaction is only treated as a transfer once possession is handed over. Since, possession in this example was handed over in **FY 2014-15** (AY 2015-16), the transfer is legally deemed to have taken place in **AY 2015-16** only.

*Mastering the differences between the **Income Tax Act, 1961** and the proposed **Income Tax Act, 2025** is essential for modern tax professionals. With evolving compliance requirements and increasing digital scrutiny, a deep understanding of both frameworks is no longer optional.*

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